

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1243

Introduced by Senator Lieu

(Principal coauthor: Assembly Member Bonilla)

February 20, 2014

An act to amend Sections 149, 201, 312, 453, 4800, 4804.5, 11506, and 22259 of, and to add Sections 101.7, 154.1, 211, and 312.1 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1243, as amended, Lieu. Professions and vocations.

(1) *Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations. Existing law requires those agencies to hold public meetings and provide public notice of a meeting.*

This bill would require each of those agencies to offer a person requesting to receive notice of a meeting the option to receive that notice by regular mail, email, or both regular mail and email, and would require the agency to comply with that request. The bill would require an agency that intends to Web cast a meeting, to provide notice of intent to Web cast the meeting.

(2) *Existing law authorizes certain agencies within the department, upon investigation and with probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency, to issue a citation including an order of correction. Existing law authorizes those agencies to notify the Public*

Utilities Commission if a person does not comply with a final order of correction, and requires the commission to require the telephone corporation providing the telephone services to disconnect the service.

This bill would apply those provisions to all agencies that comprise the department, and would delete the requirement that the advertising appear in a telephone directory.

(3) Existing law imposes specified duties on the department and allows the department to levy a charge for the estimated administrative expenses in advance on a pro rata share basis against funds of an agency comprising the department.

This bill would require the department to conduct a study of its system for prorating administrative expenses and to submit a report to the appropriate policy committees of the Legislature, on or before July 1, 2015, and on or before July 1 of each subsequent year, including the findings of the study and an accounting of the pro rata calculation. The bill would also require the department, if it engages a third-party consultant to assess the department's operations, to promptly, upon receipt of the consultant's final report on that assessment, to submit that report to the appropriate policy committees of the Legislature including the entire study upon its completion.

The bill would require the department to develop an enforcement academy, as specified, and to provide an opportunity for an employee of an agency comprising the department who performs enforcement functions to attend an enforcement academy, at least annually, to provide a solid, standard baseline of knowledge and practices for all employees who perform enforcement functions.

(4) Existing law requires an agency comprising the board to investigate a consumer accusation or complaint against a licensee and, where appropriate, the agency is authorized to impose disciplinary action against a licensee. Under existing law, an agency comprising the board may refer a complaint to the Attorney General or Office of Administrative Hearings for further action. Existing law requires the Director of Consumer Affairs to submit an annual report to the Governor and the Legislature, on or before January 1, that includes information regarding consumer complaints and the action taken on those complaints.

This bill would require the director's report to include specific, detailed information regarding those complaints and actions. The bill would require the Attorney General to submit a report to the department, the Governor, and the appropriate policy committees of the Legislature,

on or before January 1, 2016, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Office of the Attorney General pertaining to accusations and cases relating to consumer complaints against a person whose profession or vocation is licensed by an agency comprising the department. The bill would require the Office of Administrative Hearings to submit a report to the same parties in the same timeframe as described above that includes actions taken by that office with respect to cases pertaining to those complaints.

(5) Existing law requires a newly appointed member of a board comprising the department to, within one year of assuming office, complete a training and orientation program offered by the department.

This bill would require the department to develop a board member mentor program to assign an experienced board member to mentor a new board member serving on a different board.

~~(1)~~

(6) Existing law regulates the practice of veterinary medicine. Existing law, until January 1, 2016, provides for a Veterinary Medical Board within the Department of Consumer Affairs. Existing law, until January 1, 2016, authorizes the board to appoint a person exempt from civil service to be designated as an executive officer of the board, as specified.

This bill would extend those provisions until January 1, 2017.

~~(2)~~

(7) Existing law regulates the practice of common interest development managers, and makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019, and subject those provisions to review by the appropriate policy committees of the Legislature. The bill would also delete an obsolete reference.

~~(3)~~

(8) Existing law establishes the California Tax Education Council, a nonprofit organization, and requires the council to register and regulate tax preparers. Existing law makes those provisions effective only until January 1, 2015.

This bill would extend the effectiveness of those provisions until January 1, 2019.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.*

The people of the State of California do enact as follows:

1 *SECTION 1. Section 101.7 is added to the Business and*
2 *Professions Code, to read:*

3 101.7. (a) *An agency within the department that is required*
4 *to provide a written notice pursuant to subdivision (a) of Section*
5 *11125 Government Code, may provide that notice by regular mail,*
6 *email, or by both regular mail and email. An agency shall give a*
7 *person who requests a notice the option of receiving the notice by*
8 *regular mail, email, or by both regular mail and electronic mail.*
9 *The agency shall comply with the requester's chosen form or forms*
10 *of notice.*

11 (b) *An agency that plans to Web cast a meeting shall include*
12 *in the meeting notice required pursuant to subdivision (a) of*
13 *Section 11125 of the Government Code a statement of the board's*
14 *intent to Web cast the meeting. An agency may Web cast a meeting*
15 *even if the agency fails to include that statement of intent in the*
16 *notice.*

17 *SEC. 2. Section 149 of the Business and Professions Code is*
18 *amended to read:*

19 149. (a) *If, upon investigation, an agency designated in*
20 ~~*subdivision (e) Section 101*~~ *has probable cause to believe that a*
21 ~~*person is advertising in a telephone directory*~~ *with respect to the*
22 *offering or performance of services, without being properly*
23 *licensed by or registered with the agency to offer or perform those*
24 *services, the agency may issue a citation under Section 148*
25 *containing an order of correction that requires the violator to do*
26 *both of the following:*

27 (1) *Cease the unlawful advertising.*

28 (2) *Notify the telephone company furnishing services to the*
29 *violator to disconnect the telephone service furnished to any*
30 *telephone number contained in the unlawful advertising.*

31 (b) *This action is stayed if the person to whom a citation is*
32 *issued under subdivision (a) notifies the agency in writing that he*
33 *or she intends to contest the citation. The agency shall afford an*
34 *opportunity for a hearing, as specified in Section 125.9.*

35 (c) *If the person to whom a citation and order of correction is*
36 *issued under subdivision (a) fails to comply with the order of*
37 *correction after that order is final, the agency shall inform the*
38 *Public Utilities Commission of the violation and the Public Utilities*

1 Commission shall require the telephone corporation furnishing
2 services to that person to disconnect the telephone service furnished
3 to any telephone number contained in the unlawful advertising.

4 (d) The good faith compliance by a telephone corporation with
5 an order of the Public Utilities Commission to terminate service
6 issued pursuant to this section shall constitute a complete defense
7 to any civil or criminal action brought against the telephone
8 corporation arising from the termination of service.

9 ~~(e) Subdivision (a) shall apply to the following boards, bureaus,~~
10 ~~committees, commissions, or programs:~~

- 11 ~~(1) The Bureau of Barbering and Cosmetology.~~
- 12 ~~(2) The Cemetery and Funeral Bureau.~~
- 13 ~~(3) The Veterinary Medical Board.~~
- 14 ~~(4) The Landscape Architects Technical Committee.~~
- 15 ~~(5) The California Board of Podiatric Medicine.~~
- 16 ~~(6) The Respiratory Care Board of California.~~
- 17 ~~(7) The Bureau of Electronic and Appliance Repair, Home~~
18 ~~Furnishings, and Thermal Insulation.~~
- 19 ~~(8) The Bureau of Security and Investigative Services.~~
- 20 ~~(9) The Bureau of Automotive Repair.~~
- 21 ~~(10) The California Architects Board.~~
- 22 ~~(11) The Speech-Language Pathology and Audiology Board.~~
- 23 ~~(12) The Board for Professional Engineers and Land Surveyors.~~
- 24 ~~(13) The Board of Behavioral Sciences.~~
- 25 ~~(14) The Structural Pest Control Board.~~
- 26 ~~(15) The Acupuncture Board.~~
- 27 ~~(16) The Board of Psychology.~~
- 28 ~~(17) The California Board of Accountancy.~~
- 29 ~~(18) The Naturopathic Medicine Committee.~~
- 30 ~~(19) The Physical Therapy Board of California.~~
- 31 ~~(20) The Bureau for Private Postsecondary Education.~~
- 32 ~~(21) The Bureau of Real Estate.~~

33 *SEC. 3. Section 154.1 is added to the Business and Professions*
34 *Code, to read:*

35 *154.1. (a) The Legislature hereby finds and declares all of the*
36 *following:*

37 *(1) The department is currently providing opportunities for*
38 *employees of agencies comprising the department who perform*
39 *enforcement functions to attend an enforcement academy.*

1 (2) *It is in the best interest of consumers in the state for the*
2 *department to continue to provide these opportunities for*
3 *employees performing enforcement functions for each agency*
4 *comprising the department.*

5 (b) *The department shall provide an opportunity for an employee*
6 *of an agency comprising the department who performs enforcement*
7 *functions to attend an enforcement academy, at least annually, to*
8 *provide a solid, standard baseline of knowledge and practices for*
9 *all employees who perform enforcement functions. The department*
10 *shall encourage an agency executive officer, registrar, executive*
11 *director, bureau chief, enforcement manager, supervisor, or staff*
12 *member to attend an enforcement academy.*

13 (c) *The department shall develop the enforcement academy*
14 *curricula in consultation and cooperation with the Office of the*
15 *Attorney General and the Office of Administrative Hearings. The*
16 *curricula shall include, but not be limited to, complaint intake,*
17 *determining which cases should be referred for investigation,*
18 *preparing a case suitable for filing an accusation, and the*
19 *Administrative Procedure Act.*

20 (d) *The department shall develop and implement a measure of*
21 *training outcomes that includes a pretest and posttest of an*
22 *employee's knowledge of the training subject matter, and any other*
23 *performance measures that the department deems appropriate.*

24 SEC. 4. *Section 201 of the Business and Professions Code is*
25 *amended to read:*

26 201. (a) *A charge for the estimated administrative expenses*
27 *of the department, not to exceed the available balance in any*
28 *appropriation for any one fiscal year, may be levied in advance on*
29 *a pro rata share basis against any of any of the boards, bureaus,*
30 *commissions, divisions, and agencies, at the discretion of the*
31 *director and with the approval of the Department of Finance. The*
32 *department shall submit a report of the accounting of the pro rata*
33 *calculation of administrative expenses to the appropriate policy*
34 *committees of the Legislature on or before July 1, 2015, and on*
35 *or before July 1 of each subsequent year.*

36 (b) *The department shall conduct a study of its current system*
37 *for prorating administrative expenses to determine if that system*
38 *is the most productive, efficient, and cost-effective manner for the*
39 *department and the agencies comprising the department. The study*
40 *shall include consideration of whether some of the administrative*

1 *services offered by the department should be outsourced or charged*
2 *on an as-needed basis and whether the agencies should be*
3 *permitted to elect not to receive and be charged for certain*
4 *administrative services. The department shall include in its report*
5 *pursuant to subdivision (a) the findings of the study.*

6 *SEC. 5. Section 211 is added to the Business and Professions*
7 *Code, to read:*

8 *211. If the department hires a third-party consultant to assess*
9 *the department's operations, the department shall, promptly upon*
10 *receipt of the consultant's final report on that assessment, submit*
11 *that report to the appropriate policy committees of the Legislature.*

12 *SEC. 6. Section 312 of the Business and Professions Code is*
13 *amended to read:*

14 *312. (a) The director shall submit to the Governor and the*
15 *Legislature on or before January 1, 2003, and annually thereafter,*
16 *a report of programmatic and statistical information regarding the*
17 *activities of the department and its constituent entities. The report*
18 *shall include information concerning the director's activities*
19 *pursuant to Section 326, including the number and general patterns*
20 *of consumer complaints and the action taken on those complaints.*

21 *(1) The report shall include, at a minimum, all of the following*
22 *information:*

23 *(2) The total number of temporary restraining orders or interim*
24 *suspension orders sought by each constituent entity to enjoin*
25 *licensees pursuant to Sections 125.7 and 125.8, the circumstances*
26 *in each case that prompted the constituent entity to seek that*
27 *injunctive relief, and whether a restraining order or interim*
28 *suspension order was issued.*

29 *(3) Information relative to the performance of each constituent*
30 *entity, including all of the following:*

31 *(A) Number of consumer calls received.*

32 *(B) Number of consumer calls or letters designated as*
33 *discipline-related complaints.*

34 *(C) Number of complaint forms received.*

35 *(D) Number of convictions of licensees reported to the board.*

36 *(E) Number of criminal filings reported to the constituent entity.*

37 *(F) Number of complaints and referrals closed, referred out,*
38 *or resolved without discipline, respectively, prior to accusation.*

1 (G) Number of accusations filed and final disposition of
2 accusations through the constituent entities and court review,
3 respectively.

4 (H) Final discipline by category.

5 (I) Number of citations issued with and without fines.

6 (J) Number of cases in process more than six months after a
7 constituent entity receives information regarding the acts relevant
8 to a filed accusation.

9 (K) The average and median times in processing complaints
10 from when a constituent entity receives a complaint to each stage
11 of discipline and court review.

12 (L) Final discipline by category.

13 (M) Number of public reprimands issued.

14 (N) Probation violation reports and probation revocation filings
15 and dispositions.

16 (O) Number of petitions for reinstatement and the dispositions
17 of those petitions.

18 (P) Caseloads of investigators for both original cases and
19 probation cases.

20 (Q) Number of reports pursuant to Section 805 or Section 805.01
21 by type of peer review body reporting and, where applicable, the
22 type of health care facility involved and the number and type of
23 administrative or disciplinary actions taken by a constituent entity
24 with respect to those reports.

25 (R) Number of reports pursuant to Section 801.01 or 803.

26 (S) The number of malpractice settlements in excess of thirty
27 thousand dollars (\$30,000) reported pursuant to Section 801.01.

28 (T) Number of coroner's reports received by a board.

29 (U) Average length of time for a constituent entity to reach each
30 of the following milestones in the enforcement process:

31 (i) Average number of days from when a constituent entity
32 receives a complaint until the board assigns an investigator to the
33 complaint.

34 (ii) Average number of days from a constituent entity opening
35 an investigation conducted by the constituent entity staff or the
36 Division of Investigation to closing the investigation regardless
37 of outcome.

38 (iii) Average number of days from a constituent entity closing
39 an investigation to imposing formal discipline.

1 (iv) Average number of days for a constituent entity to conduct
2 a supplemental investigation for a case that was rereferred by the
3 constituent entity to the Attorney General to file an accusation.

4 (b) “Action,” for purposes of this section, means a proceeding
5 brought by, or on behalf of, a constituent entity against a licensee
6 for unprofessional conduct that has not been finally adjudicated,
7 and a disciplinary action taken by a constituent entity against a
8 licensee.

9 (c) A report submitted pursuant to subdivision (a) shall be
10 submitted in compliance with Section 9795 of the Government
11 Code.

12 SEC. 7. Section 312.1 is added to the Business and Professions
13 Code, to read:

14 312.1. (a) The Attorney General shall submit a report to the
15 department, the Governor, and the appropriate policy committees
16 of the Legislature on or before January 1, 2016, and on or before
17 January 1 of each subsequent year that includes, at a minimum,
18 all of the following:

19 (1) Number of cases referred to the Attorney General by each
20 constituent entity comprising the department.

21 (2) Number of cases referred by the Attorney General back to
22 each constituent entity with no further action.

23 (3) Number of cases rereferred by a constituent entity to the
24 Attorney General after each constituent entity or the Division of
25 Investigation completes a supplemental investigation.

26 (4) Number of accusations filed by each constituent entity.

27 (5) Number of accusations a constituent entity withdraws.

28 (6) Average number of days from the Attorney General receiving
29 a case to filing an accusation on behalf of each constituent entity.

30 (7) Average number of days to prepare an accusation for a case
31 that is rereferred to the Attorney General after a supplemental
32 investigation is conducted by staff of a constituent entity or the
33 Division of Investigation for each constituent entity.

34 (8) Average number of days from filing an accusation to
35 transmitting a stipulated settlement for each constituent entity.

36 (9) Average number of days from filing an accusation to
37 transmitting a default decision for each constituent entity.

38 (10) Average of days from filing an accusation to scheduling a
39 hearing for each constituent entity.

1 *(11) Average numbers of days from scheduling a hearing to*
2 *conducting a hearing for each constituent entity.*

3 *(b) The Office of Administrative Hearings shall submit a report*
4 *to the department, the Governor, and the Legislature on or before*
5 *January 1, 2016, and on or before January 1 of each subsequent*
6 *year that includes, at a minimum, all of the following:*

7 *(1) Number of cases referred by each constituent entity to each*
8 *office of the Office of Administrative Hearings for a hearing.*

9 *(2) Average number of days from receiving a request to setting*
10 *a hearing date at each office of the Office of Administrative*
11 *Hearings.*

12 *(3) Average number of days from setting a hearing to conducting*
13 *the hearing.*

14 *(4) Average number of days after conducting a hearing to*
15 *transmitting the proposed decision by each office of the Office of*
16 *Administrative Hearings.*

17 SEC. 8. *Section 453 of the Business and Professions Code is*
18 *amended to read:*

19 453. *(a) Every newly appointed board member shall, within*
20 *one year of assuming office, complete a training and orientation*
21 *program offered by the department regarding, among other things,*
22 *his or her functions, responsibilities, and obligations as a member*
23 *of a board. The department shall adopt regulations necessary to*
24 *establish this training and orientation program and its content.*

25 *(b) The department shall develop a board member mentor*
26 *program through which experienced board members will be trained*
27 *to act as mentors to newly appointed board members. A mentor*
28 *member should be assigned to a new board member who serves*
29 *on a different board. A mentor may be a current or former board*
30 *member.*

31 ~~SECTION 1.~~

32 SEC. 9. *Section 4800 of the Business and Professions Code is*
33 *amended to read:*

34 4800. *(a) There is in the Department of Consumer Affairs a*
35 *Veterinary Medical Board in which the administration of this*
36 *chapter is vested. The board consists of the following members:*

37 *(1) Four licensed veterinarians.*

38 *(2) One registered veterinary technician.*

39 *(3) Three public members.*

1 (b) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2017, deletes or extends that date.

4 (c) Notwithstanding any other law, the repeal of this section
5 renders the board subject to review by the appropriate policy
6 committees of the Legislature. However, the review of the board
7 shall be limited to those issues identified by the appropriate policy
8 committees of the Legislature and shall not involve the preparation
9 or submission of a sunset review document or evaluative
10 questionnaire.

11 ~~SEC. 2.~~

12 *SEC. 10.* Section 4804.5 of the Business and Professions Code
13 is amended to read:

14 4804.5. The board may appoint a person exempt from civil
15 service who shall be designated as an executive officer and who
16 shall exercise the powers and perform the duties delegated by the
17 board and vested in him or her by this chapter.

18 This section shall remain in effect only until January 1, 2017,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2017, deletes or extends that date.

21 ~~SEC. 3.~~

22 *SEC. 11.* Section 11506 of the Business and Professions Code
23 is amended to read:

24 11506. This part shall be subject to review by the appropriate
25 policy committees of the Legislature. This part shall remain in
26 effect only until January 1, 2019, and as of that date is repealed,
27 unless a later enacted statute, that is enacted before January 1,
28 2019, deletes or extends that date.

29 ~~SEC. 4.~~

30 *SEC. 12.* Section 22259 of the Business and Professions Code
31 is amended to read:

32 22259. (a) This chapter shall be subject to review by the
33 appropriate policy committees of the Legislature.

34 (b) This chapter shall remain in effect only until January 1,
35 2019, and as of that date is repealed, unless a later enacted statute,
36 that is enacted before January 1, 2019, deletes or extends that date.